IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6290 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI D.P.TRIVEDI

Versus

THE STATE OF GUJARAT THROUGH THE SECRETARY

Appearance:

1. Special Civil Application No. 6290 of 1984

MR PV HATHI for Petitioner No. 1-6

MR PRADEEP D BHATE AGP for Respondent No. 1

MR DD VYAS for Respondent No. 2

..... for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 16/08/2004

ORAL JUDGEMENT

1.0 The petitioners herein have challenged the

Government Circular dated 07/10/1978 at Annexure `D' whereby the State Government had directed the bifurcation of the Public Works Department of the respondent Panchayat into two separate wings and the action of Panchayat in terminating the petitioners services by order dated 21-22/02/1984 at Annexure `F' and the judgment and order of the Gujarat Civil Services Tribunal dated 30/11/1984 passed in Appeal No.89 to 94 of 1984, at Annexure `H' to the petition, dismissing the appeal of the petitioners.

2.0 Petitioners no.1 to 5 herein were appointed as Supervisors (Civil) with the respondent Panchayat on temporary basis by order dated 03/10/1978, at Annexure `B' to the petition. By order dated 22/11/1978, at Annexure `C' to the petition, petitioner no.6 was also given appointment to the above post with effect from 03/10/1978. In the said order at Annexure `B' to the petition, the petitioners were placed at Sr.Nos.9, 11, 16, 19, 20 and 23 respectively. As per this order, the petitioners were given appointment and posting in various sub-divisions of the Irrigation Department of the respondent District Panchayat.

2.1 By Circular dated 07/10/1978, at Annexure `D' to the petition, the State Government decided that the Public Works Department of the respondent Panchayat be bifurcated into two separate wings viz. the Irrigation Wing and the Buildings and Communications Wing. As a result of the said bifurcation, there was a great influx of employees from the Buildings and Communications Wing to the Irrigation Wing.

2.2 By office order dated 18/01/1980, the State Government constituted the Flood Damage Restoration Division and other Sub-divisions. The said Division was closed on 13/05/1983. Due to the closure of the said Division, work in the Irrigation Wing of the respondent Panchayat was reduced. Apprehending termination of their services, the petitioners preferred Civil Suits before the Civil Judge (S.D.), Rajkot. The said suits were later withdrawn in view of the affidavit filed on behalf of the respondent Panchayat stating that there was no move on the part of the Panchayat to make the petitioners surplus or to terminate their services, at Annexure `E' to the petition.

2.3 Thereafter, by Notice dated 21-22/02/1984, the petitioners were informed that as their services were not required by the Irrigation Wing of the respondent Panchayat, their services are terminated with effect from

22/03/1984.

2.4 Feeling aggrieved by the aforesaid action of the respondent Panchayat, the petitioners preferred appeal being Appeals No.89 to 94 of 1984 before the Gujarat Civil Services Tribunal challenging their termination orders. By judgment and order dated 20/03/1984, the Tribunal admitted the appeals of the petitioner and rejected their stay applications.

2.5 The petitioners preferred Special Civil Application No.1612 of 1984 before this Court challenging their termination orders as well as the judgment and order of the Tribunal dated 20/03/1984 refusing grant of interim stay in their appeals. The said Special Civil Application was dismissed as withdrawn by order dated 01/10/1984, at Annexure `G' to the petition, with a direction that the Tribunal concerned shall hear and finally dispose of the appeals preferred by the petitioners by 30/11/1984. Pursuant to the aforesaid order of this Court in the aforesaid Special Civil Application, the Tribunal by its judgment and order dated 30/11/1984, at Annexure `H' to the petition, dismissed the appeals of the petitioners.

3.0 Mr.P V Hathi learned advocate for the petitioner has submitted that out of the original six petitioners, petitioners no.1 & 2 have left the service and petitioners no. 4 & 6 were taken up on regular basis by the respondent Panchayat while the said benefit was denied to petitioners no.3 & 5. He has further submitted that petitioner no.5 has expired during the pendency of the petition and that his heirs are already brought on record.

3.1 Mr.Hathi has submitted that petitioner no.3 had filed an application being Civil Application No.1728 of 1996 before this Court, at Annexure `P' to the petition, with a grievance that he was not offered employment though other similarly situated surplus employees were offered employment on 19/01/1996. He has submitted that by order dated 20/04/1996, at Annexure `P' to the petition, this Court had directed the respondent Panchayat by way of interim relief to consider the case of the petitioner. The said order was challenged in Letters Patent Appeal which was ultimately withdrawn.

3.2 Mr.Hathi has contended that it is clear from the letter dated 05/07/1996, at Annexure `Q' to the petition that the Department was not made aware of the said letter of the Selection Board giving approval of the appointment

of petitioner no.3 in Rajkot District Panchayat instead of Ahmedabad District Panchayat. Therefore, it was erroneously assumed that petitioner no.3 had refused to accept appointment when offered by the Board in Ahmedabad which is incorrect.

3.3 Mr.Hathi has further submitted that the petitioner ought to have been considered for employment in view of regularization by the Gujarat Panchayat Service Selection Board by its letter dated 05/01/1990, at Annexure `Q' to the petition, by which petitioners no.3 and 5 were directed to be reappointed by the Selection Board. He has contended that since the order of the Selection Board was not brought to the notice of the Division Bench of this Court, under bonafide mistake, Letters Patent Appeal came to be filed. He has therefore submitted that since the petitioners are working right from 1984/85, the respondent District Panchayat should be directed to regularize their services.

4.0 Mr.D D Vyas learned advocate for the respondent District Panchayat has contended that the decision of the Government bifurcating the Public Works Department into two departments ultimately culminated into the pursuance of the Circular dated 07/10/1978, at Annexure `D' to the petition. He has submitted that as the petitioners were appointed after 01/10/1978, they were not required to be given any option for the selection of the Wing. Moreover, being appointed on temporary basis, their appointment was made subject to the availability of work in the department.

4.1 Mr.Vyas has contented that since the applications of the petitioners before the learned Civil Judge (S.D.), Rajkot for interim reliefs were rejected, it is now not open to the petitioners to file the present petition on the same subject matter of dispute and claiming the same reliefs.

4.2 Mr.Vyas has further contented that since the Flood Damage Restoration Division and Sub-divisions working under the District Panchayat were closed down because of non-availability of work relating to flood control in the District Panchayat, the petitioners were not required in service. Therefore, their services were terminated on the principle of `last come first go'. In that view of the matter, Mr.Vyas has submitted that the petition is required to be dismissed.

4.3 Mr.Vyas has pointed out that one of the petitioners Mr.Karshanbhai H. Pather, petitioner no.3

herein, had approached the Gujarat Civil Services Tribunal by way of an appeal being Appeal No.445 of 1998 with a prayer to quash the order dated 19/06/1990 discharging him from the Panchayat service. The said appeal was dismissed by the Tribunal by its judgment and order dated 30/01/2004. Mr.Vyas produces a copy of the said decision which is taken on record.

5.0 I have heard the learned Counsel for the parties and have gone through the documents produced on record. By Circular dated 07/10/1978 the Government had decided that the Public Works Departments should be bifurcated into two departments. In my opinion, the Government was justified in giving retrospective effect, by not giving option to the persons who were appointed on or after 01/10/1978 by Circular dated 07/10/1978, as thereby the Government had decided to have separate cadres of Supervisor (Civil), Irrigation and Supervisor (Civil), Buildings and Communications. The petitioners were not given option as per that Circular dated 07/10/1978, as they were appointed in the separate cadre of Supervisor (Civil) Irrigation, on which post they were appointed by order dated 03/10/1978. Therefore, the Tribunal was justified in dismissing the appeals of the petitioners.

5.1 Having regard to the facts and circumstances of the case and keeping in mind the fact that the petitioners have put up more than 20 years service with the respondent Panchayat and when their reappointment was approved by the Selection Board on 05/01/1990, the respondent authority ought to have considered the case of both the petitioners.

6.0 In the result, the petition is dismissed. The respondent District Panchayat is directed to consider the case of petitioner no.3 for employment as and when vacancy is available, since the petitioner has put up more than 20 years of service with the respondent Panchayat.

6.1 The respondent Panchayat is further directed to consider the case of petitioner no.5 even if he has worked on daily wages for the purpose of pension, if he has worked for the requisite number of years which are required under its Rules. Rule is discharged. No order as to costs.

(K. S. Jhaveri, J.)

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